

Merchant or other person selling to a Bankrupt upon Trust and becoming his Debtor, must run the Risk of his Debtor's Condition and Estate, who cannot prefer him a Creditor to his other Creditors who use more timely Diligence. See the common Debtors not being able to pay them all 12 Feb. last Novemb. 1673 Veitch contra Daint. But a voluntary Disposition by a Debtor of Lands after the same were appraised by his Creditors, granted to one who was not before Creditor to the Disposer, for a just Price then paid is not quarrellable as granted in *fraudem creditorum* & c. See Neilson contra Ross. Nor was a Disposition granted by a Person insolvent and there a notorious Bankrupt, for a Bargain of several Acre and cottages and a Month before his Disposition, reduced upon the Act of Parliament 1696 as in *Support* of his Creditors 20 July 1696 L. Birkenburg contra Johnson & Sargis. The a Matter obtaining a Disposition to come in his hands from his Tenant for Payment of a preceding Year's Rent that was not in the Hypothek, after the Tenant was concerned at the House of merchant's Call, and having obtained Payment there by Virtue of his Disposition was not bound to restore what he had received, more than he had paid. See also that Creditor who in anterior Diligence would have been preferred in a competition 9 July 1699 English Lady Accotours contra Johnson.

Where a Decree is reduced as in *fraudem creditorum*, the Court declares the Thing it self to be restored with the Fruits that were upon it at the Time of the Restoration, as being *pro re soluta*, the such as were reaped at Commencing of the Action but not those reaped *in medio tempore* i. e. 5. *fructus in fructu*. The Law of Scotland allows not the Creditors of a Debtor to be preferred the Time of the Alienation, more than of those reaped in the Intermittence before the Decree was called in Question. It appoints Trustees to be restored only from the Time that the Disposer is supposed to know the Privilege of his Right.

2.

Of notour Bankrupts and their fraudulent Deeds.

If any Debtor under Diligence by ^{and Caption} Horning at the Instance of his Debtor be either imprisoned or retire to the Abbey or other privileged place, or flee or abscond for his personal Security, or defend his Person by Force and be afterwards found by Sentence of the Lords of Session to be insolvent he is to be held and reputed upon these joint grounds of Horning, Caption and Insolvency, with one or other of the said Alternatives of Imprisonment, retiring, or flying, or absconding, or forcible defending, to be a notour Bankrupt, from the Time of his said Imprisonment, retiring, flying, absconding, or forcible defending, Act 5. Sept. 6. Par. R. W. made anno 1696. Which Insolvency in Order to make one notour Bankrupt is to be reckoned at the Time of the Concurrence of the above Qualifications.

Bankrupt, and not at the Time of pursuing a Declarator of Bankrupt. And to prove the Insolvency, only principal Sums, Annuals and the rest of resting Penalties incurred, and Accumulations established the present Time of the Concurrence of such Qualifications, are brought in compute 4 January 1712 Forbes et al. contra Maitland's personal against his real Creditors.

A Person may be declared a notour Bankrupt by the Lords of Session in a Process raised and executed by any of his real Creditors. Act 8.

A Disposition by a Person insolvent at the Time in his Shop & some of his Creditors when he was a publick Magistrate, was found not quarrellable upon the Act of Parliament 1696 at the Instance of their Creditors who had some Diligence before granting of the Disposition: albeit the Disposition was void to the Debtor in a few Days after, and there was Diligence used against him ~~consequently~~ by other Creditors before the Disposition, seeing Diligence could only be obtained to the Debtor at whose Instance it was used 22 July 1697 Chancellor contra Hamilton, Drummond and others. But now all voluntary Deeds of a notour Debtor made directly or indirectly by the Bankrupt at, or after, or in the Space of 60 Days before his becoming so, in Favour of any of his Creditors, whether in Satisfaction or Security, are void and null. The several Rights which upon Instrument may arise, are reckoned as to a notour Bankrupt to be any of the Sale of his Goods, without regard to their Validity as to other Effects. Act 5. Sept. 6. Par. R. W.

A Bankrupt having assigned his Goods to his Creditors, for Payment of their Debts, and in proportionality according to their several Rights and Diligencies, and one of these Creditors having afterwards executed a particular claim, in Favour of his whole Creditors, was found not reducible upon the Act of Parliament 1696 at the Instance of a posterior Creditor. Albeit it was pleaded for the Arrestor, that one in the State of Bankruptcy cannot disappoint even the Chance of his Creditors Diligence, and bring them in *pro re soluta* contrary to the Tenor of our Law, which prefers the vigilant according to their Diligence; 2. Creditors having Right to prosecute their Diligence; no voluntary Right made by the Bankrupt to them can, unless they accept it, deprive them of their Right to use Diligence or of the Benefit of Diligence used by them: And it is in the Power of any one that stands out to follow forth his Diligence, tho' all the rest accept, In respect it was answered, that Nothing more is intended by the Act 1696 than to tie up a Bankrupt from doing fraudulent Deeds in Prejudice of his Creditors: Whereas this in Question is the most fair and honest Thing he could do to them. They have his whole Means stated in them, without the expensive Circuit of legal Conveyances by Judications, Pleadings and Forthcomings, and no Ground of Preference competent to one against another the Time of the Disposition cut off: Tho' the Disposition prevents any Benefit that might afterwards arise to one Creditor, by out-running another